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JUL 25 2008

In re Application of
Kirkor Sirinyan, et al.
Application No. 10/682,127
Filed: October 9, 2003
Attorney Docket No. LEA35172

**DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)**

This is a decision in response to the "Petition to Accept Delayed Claim for Priority Under 35 CFR §1.55," filed November 26, 2007, which is being treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional application set forth in the concurrently filed Application Data Sheet (ADS).

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional,

or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure (MPEP) Section 201.11, Reference to Prior Nonprovisional Applications.

It is noted that the ADS filed November 26, 2007 states the Continuity Type (relationship) as "a 371 of international" Prior Application No. PCT/EP02/03619, filed 2002-04-02. However, a review of the record fails to show that the present application is a National Stage Entry under 35 U.S.C. 371 of International Patent Application No. PCT/EP02/03619 filed April 2, 2002.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application to this application, are required.

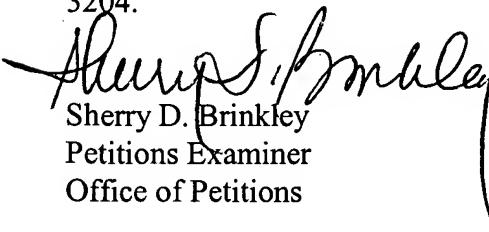
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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.


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